



July 16, 2009

Sotomayor and property rights

Sonia Sotomayor's Supreme Court confirmation hearings haven't focused much on property rights (a google search turned up only a few references to the subject this week, and no articles exclusively about it) but some property rights advocates are pretty concerned about her views.

One is Ilya Somin, a professor George Mason University Law School and a source I spoke with on occasion when I covered the Supreme Court from 2003-2007. I don't think I'm exaggerating when I say he's one of the legal community's foremost experts on property rights.

Somin testified today (read a transcript http://judiciary.senate.gov/hearings/testimony.cfm?id=3986&wit_id=8120">here) and has been blogging (at www.volokh.com">The Volokh Conspiracy, in my opinion one of the best and most provocative legal blogs around) about how Sotomayor might change the court's dynamics on property rights.

He is not optimistic.

One of the more interesting facets of the property rights debate in this country is its appeal to both right and left. It shows that civil libertarians live on both sides of the political fences we erect.

When the court, in 2005, ruled that the Fifth Amendment didn't bar a Connecticut town from condemning private property to turn over to a private developer, the critics came from all sides, and justly so. Overzealous public takings have destroyed neighborhoods of all kinds, full of people from all kinds of backgrounds. It's a problem that doesn't respect the cultural, ethnic or even economic boundaries that divide us on so many other issues.

I'm far from a property rights nut, and as with all the rights enumerated or implied in the Constitution, they are far from absolute. There are times when they need to be balanced against other interests, and times when they must rightfully be repressed in favor of those interests. (Yes, many times that means environmental concerns.)

But Somin believes Sotomayor is, overall, even less sensitive to property rights than the current court, and he has cited lots of evidence over the last few weeks to back his position.

A few weeks ago, the Cato Institute sent me a piece written by Somin that I thought I'd share as well. You can read it <http://www.freep.com/article/20090716/OPINION05/90716072/1231/opinion/Eroding-constitutional-limits-on-governmental-takings>">here.

Overall, I think Sotomayor is highly qualified for the court, and should be confirmed. (I'll post more next week about why I think that's so.)

But it's definitely worth noting her views on property rights, and wishing the Senate had spent a little more time discussing them this week.
